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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

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In re SETH K., a Person Coming Under  
the Juvenile Court Law.

SUTTER COUNTY DEPARTMENT OF HUMAN  
SERVICES,

Plaintiff and Respondent,

v.

ROBERT K.,

Defendant and Appellant.

C051952

(Super. Ct. No.  
DPSQ056062)

Robert K., father of the minor, appeals from orders terminating his parental rights. (Welf. & Inst. Code, §§ 366.26, 395; unspecified section references that follow are to this code.) Appellant contends he was denied due process by failure to provide him notice of hearings prior to the section 366.26 hearing at which his parental rights were terminated. We affirm the orders of the juvenile court.

## FACTS

In February 2005, Department of Human Services (DHS) filed a nondetention petition alleging the newborn minor was at risk due to the mother's substance abuse, homelessness and failure or inability to care for her other two children who resided with relatives. The petition identified appellant as the minor's father and stated that he had a significant criminal history, was on parole and his whereabouts were unknown. The detention report said DHS had contacted appellant's parole officer who had no information on appellant's whereabouts and that the mother did not know appellant's address, although she had been in a relationship with him for a year, and believed he lived "somewhere in Linda."

An amended notice for the jurisdictional/dispositional hearing listed an address for appellant on Garden Avenue in Marysville. A return receipt shows delivery of the notice to that address signed by Theresa K. A return receipt for the notice of the dispositional hearing sent to the same address was returned with the notation "no such address."

The report for the jurisdictional/dispositional hearing stated that the Garden Avenue address was listed by appellant's parole officer as his last known address. Although reportedly living in Marysville, appellant had not been located by the time of the report so DHS had no statement from him. The report also detailed appellant's criminal history, which included theft and drug related offenses as well as crimes of violence. At the

jurisdictional hearing, the court sustained the petition. An addendum report stated the mother had entered a treatment program. At the dispositional hearing in March 2005, the court ordered the minor to remain with the mother in a family maintenance program.

According to an interim report in June 2005, the mother voluntarily placed the minor in foster care while she attempted to complete residential treatment. The mother and appellant came to DHS offices on May 16, 2005. That day, appellant submitted to testing which established him as the minor's biological father. Appellant also tested positive for methamphetamine and marijuana. Appellant's parole officer informed DHS appellant had also tested positive in a test required by parole and was not participating in a drug treatment program. DHS offered services to appellant who declined them, believing he "did not need services." Appellant failed to report to his parole officer the next day but several days later escorted the mother to her residential treatment program. Notice of a review hearing in June 2004 was sent to appellant on May 24, 2005, at a new address on Gledhill in Marysville but returned several weeks later marked "insufficient address."

DHS filed a supplemental petition in the middle of June 2005, because the mother dropped out of her treatment program and informed DHS she wanted the minor adopted. Notice of the detention was sent to the mother at her last known address, i.e., her treatment program, and appellant's notice was sent to the Gledhill address. Both return receipts were marked "attempted

not known." In the detention report, DHS listed its efforts to locate the parents, which included contacting the mother's treatment program, the maternal grandparents and appellant's parole officer. The parole officer went to appellant's last known address but appellant was not present and his whereabouts were unknown.

The jurisdictional hearing report again related the efforts made by DHS to locate the parents, noting that appellant's parole officer stated that appellant was not home each time the officer tried to contact him there. Notice of the jurisdictional hearing was mailed to appellant at the Gledhill address. The return receipt stated the notice was unclaimed. Neither parent was present at the June 2005 jurisdictional hearing on the supplemental petition, however, the court sustained the petition.

Notice of the dispositional hearing was mailed to appellant at the Gledhill address. The return receipt stated "insufficient address."

The report for the dispositional hearing recommended denial of services to both appellant and the mother. The report stated that appellant's parole officer informed DHS appellant was now considered a parolee at large with a warrant out for his arrest. The mother told the social worker she wanted the minor to be adopted. Appellant previously had stated he could have other children and did not care what happened. The report noted that, as a biological father, appellant was not entitled to services unless the court found it was in the minor's best interests and concluded that it was not.

At the dispositional hearing, the mother's counsel stated she had no contact with her client. The court found that the parents were not interested in receiving services and set a section 366.26 hearing, authorizing DHS to serve notice of the hearing on the parents by publication.

Notice of the section 366.26 hearing was mailed to appellant at the Gledhill address. The return receipt stated the notice was unclaimed. DHS requested a continuance of the hearing to permit publication, reiterating the prior efforts to locate appellant and stating that DHS believed the parents were together since they were seen together when the mother left her treatment center. The court granted the requests. Despite the order for service by publication, notice of the new section 366.26 hearing was again mailed to appellant at the Gledhill address. Prior to the section 366.26 hearing in January 2006, appellant was located in state prison and notice of the hearing was mailed to him there.

Appellant was present in custody at the hearing. Counsel was appointed for appellant and the hearing was continued.

The DHS report for the section 366.26 hearing stated the parents had been out of contact for six months and recommended termination of parental rights. The state Department of Social Services assessment stated that the parents had no relationship with the minor and had not visited him. Notice of the new hearing date was mailed to appellant in jail where he was housed pending the hearing.

At the section 366.26 hearing, appellant opposed termination of his parental rights on the ground that he had inadequate notice from the outset of the proceedings. Counsel argued that, although appellant submitted to a paternity test, there was no evidence he knew he was the minor's father and he had not appeared at any hearing. Counsel noted that all notices had been sent to the Gledhill address and suggested that appellant had been in prison since sometime in June 2005, although he was not located there until January 2006. Counsel argued that regardless of appellant's responsibility, DHS had a responsibility to make a good faith effort to provide notice to him and did not do so. The court terminated parental rights.

## DISCUSSION

Appellant argues he was denied due process because DHS failed to provide him notice of the hearings that preceded the section 366.26 hearing at which his parental rights were terminated. Appellant asserts that the record does not disclose due diligence on the part of DHS to locate and serve him.

The social worker is required to give written or oral notice of the detention hearing to the father when a petition to detain a child is filed. (§ 290.1, subds. (a), (e).) An alleged father is entitled to notice of the proceedings only to give him an opportunity to establish paternity. (*In re Alyssa F.* (2003) 112, Cal.App.4th 846, 855.) If the parent's address is known, or becomes known prior to filing the petition, the clerk of the juvenile court is also required to give notice of the initial

petition hearing by mail. (§ 290.2, subds. (a), (c).) After the initial hearing, the clerk of the court provides notice of the jurisdictional/dispositional hearing by mail or personal service. (§ 291, subds. (a), (e).) For review hearings, the social worker is responsible for giving notice by mail to the person's last known address. (§§ 292, subds. (a), (e); 293, subds. (a), (e).) Due diligence must be shown if service by publication is contemplated for notice of a hearing to terminate parental rights. (§ 294, subd. (f).)

The question is, what efforts must be made by the social worker to locate an absent parent for service? Notice must be likely under the circumstances to apprise the parent of the pendency of the action and provide the parent an opportunity to present their objections. (*In re Emily R.* (2000) 80 Cal.App.4th 1344, 1351.) The means employed must be one that might reasonably be adopted to accomplish notice. (*Id.* at p. 1352.)

Certainly the social worker must make some effort to locate a missing parent and utilize known information to do so. (*In re DeJohn B.* (2000) 84 Cal.App.4th 100, 110 [Department made no effort to locate]; *In re Arlyne A.* (2000) 85 Cal.App.4th 591, 593, 598-599 [Department failed to use known information].) However, if publication is the means employed to provide notice, due diligence is required. (§ 294, subd. (f); *In re Emily R.*, *supra*, 80 Cal.App.4th at p. 1352 [due diligence required to publish notice of proceedings to alleged father who had no known current address]; *In re Arlyne A.*, *supra*, 85 Cal.App.4th at p. 594 [due diligence also required where juvenile court orders due

diligence reports on efforts to locate parents].) Absent a requirement of due diligence, reasonable efforts are all that are required to ascertain a parent's whereabouts and provide notice by mail or personal service. (*In re Melinda J.* (1991) 234 Cal.App.3d 1413, 1418-1419; *In re B.G.* (1974) 11 Cal.3d 679, 689.)

Here, DHS did make reasonable efforts to locate appellant. At the outset, the social worker asked the mother for information but she was unable to provide a specific address for appellant. DHS also contacted appellant's parole agent who provided appellant's last known address to which notices of the proceedings and the jurisdictional/dispositional hearing were sent. Before the next hearing, appellant came into the DHS offices and spoke to the social worker about the case. At this point, he had actual notice of the proceedings, although little or no interest in them or the possibility the minor was his child. The notice for the review hearing was sent to appellant at a new address shortly after his visit to DHS offices. The reasonable inference is that the social worker, in speaking with appellant secured a new address for him. Thereafter, the social worker continued to have contact with appellant's parole agent in attempts to locate him and was informed that the parole agent also was unable to find appellant although the agent continued to try to locate him by going to his home. Ultimately, appellant was located in state prison and notices were mailed to his custodial address.



We recognize that the return receipts contain varied and sometimes conflicting information on delivery attempts. However, it is apparent from the record that DHS maintained contact with appellant's parole agent who was most likely to have information on his whereabouts and that the parole agent was actively seeking appellant. Moreover, while the court authorized service by publication, no such service was attempted or occurred. Thus, the more stringent due diligence efforts were not required.

DHS made reasonable efforts to locate and maintain contact with appellant. Appellant, having come to the DHS offices and discussing the case with the social worker had actual knowledge of the proceedings. That appellant chose not to inquire about the paternity test results or keep DHS informed of his whereabouts does not change the fact that he had notice and opportunity to be heard in the matter. The demands of due process were satisfied.

#### DISPOSITION

The orders of the juvenile court are affirmed.

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HULL, J.

We concur:

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SCOTLAND, P.J.

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DAVIS, J.